



General Assembly

January Session, 2001

Committee Bill No. 6

LCO No. 3952

Referred to Committee on Select Committee on Aging

Introduced by:
(AGE)

**AN ACT REQUIRING CRIMINAL BACKGROUND CHECKS ON
CAREGIVERS TO THE ELDERLY.**

Be it enacted by the Senate and House of Representatives in General
Assembly convened:

1 Section 1. (NEW) (a) As used in this section:

2 (1) "Applicant" means an individual who seeks and is offered
3 employment or contractual service as a caregiver or an administrator
4 with a care provider;

5 (2) "Caregiver" means an individual whose employment or
6 contractual service with a care provider includes physical access to any
7 care recipient served by the provider or access to the finances of such
8 care recipient;

9 (3) "Care provider" or "provider" means a nursing home or home
10 health care agency;

11 (4) "Care recipient" means an individual under the care of a
12 provider if the individual has a physical or mental illness, injury or
13 disability or suffers from any cognitive impairment that restricts or
14 limits the individual's activities;

15 (5) "Nation-wide criminal history screening" means a criminal
16 history background investigation of an applicant through the use of
17 fingerprints collected by the Department of Public Safety and
18 submitted to the Federal Bureau of Investigation, resulting in
19 generation of a nation-wide criminal history record for that applicant;

20 (6) "Nation-wide criminal history record" means information
21 concerning an individual's arrests, indictments or other formal
22 criminal charges and any dispositions arising therefrom, including, but
23 not limited to, convictions, dismissals, acquittals, sentencing and
24 correctional supervision, collected by criminal justice agencies and
25 stored in the computerized databases of the Federal Bureau of
26 Investigation, the National Law Enforcement Telecommunications
27 System, the Department of Public Safety or the repositories of criminal
28 history information of other states.

29 (7) "Department" means the Department of Public Health.

30 (b) The Department of Public Health may review an applicant's
31 nation-wide criminal history record obtained by the Department of
32 Public Safety as a result of a nation-wide criminal history screening
33 pursuant to an applicant's authorization for such criminal history
34 screening. Upon a provider's request, the Department of Public Safety,
35 or its designee, shall take a set of fingerprints for a nation-wide
36 criminal history screening. The Department of Public Safety shall
37 retain the fingerprints for the purpose of conducting a nation-wide
38 criminal history screening.

39 (c) On and after October 1, 2001, no care provider may hire an
40 applicant unless the applicant has submitted to a request for a nation-
41 wide criminal history screening prior to beginning employment in
42 accordance with this section, or unless the applicant has submitted to a
43 nation-wide criminal history screening pursuant to this section within
44 the previous twelve months and does not have a criminal record.

45 (d) Except as provided in subsection (f) of this section, the

46 Department of Public Health may disqualify an applicant from being
47 hired by a care provider who (1) the department finds is not fit for
48 employment as a caregiver or administrator or who presents a risk of
49 harm to a care recipient, and (2) within the three years prior to the date
50 the Department of Public Health receives the results of the nation-wide
51 criminal history record for the applicant pursuant to subsection (e) of
52 this section, has been convicted, incarcerated or on probation in this
53 state for any of the following offenses, or in any other state for an
54 offense substantially similar to any of the following offenses: (A)
55 Cruelty to persons under section 53-20 of the general statutes; (B)
56 assault of a victim age sixty or older under section 53a-59a, 53a-60b or
57 53a-60c of the general statutes; (C) sexual assault under any provision
58 of sections 53a-70 to 53a-73a, inclusive, of the general statutes; (D)
59 larceny under any provision of sections 53a-122 to 53a-125b, inclusive,
60 of the general statutes; (E) burglary under any provision of sections
61 53a-101 to 53a-103a, inclusive, of the general statutes; or (F) robbery
62 under any provision of sections 53a-134 to 53a-136a, inclusive, of the
63 general statutes.

64 (e) Upon receipt by the Department of Public Health of the results of
65 the applicant's nation-wide criminal history record, the Department of
66 Public Health shall give notice to such care provider of whether the
67 Department of Public Health has disqualified the applicant pursuant to
68 subsection (d) of this section. No other results of the applicant's
69 criminal history screening may be provided to the care provider.
70 Except as provided in subsection (f) of this section, a care provider
71 may not employ an applicant who has been disqualified by the
72 Department of Public Health. When the Department of Public Health
73 provides notice to the care provider of such disqualification, the
74 department shall also notify the applicant of the specific convictions on
75 which its decision is based.

76 (f) An applicant who is disqualified by the Department of Public
77 Health pursuant to subsection (d) of this section may request a hearing
78 by the Department of Public Health. The commissioner shall hold the

79 hearing not later than ten business days after the commissioner
80 receives such request unless the applicant requests an extension. The
81 commissioner shall grant an extension for the period of time requested
82 by the applicant. The commissioner shall issue a decision not later than
83 ten business days after the hearing. The care provider may hire the
84 applicant if the hearing or appeal therefrom results in a determination
85 that the applicant's nation-wide criminal history record inaccurately
86 reflects the disqualifying conviction of a crime specified in subsection
87 (d) of this section, or that the employment presents no risk of harm to a
88 care recipient, or that the conviction does not directly bear upon the
89 applicant's fitness for the employment.

90 (g) An applicant aggrieved by the action of the Commissioner of
91 Public Health in disqualifying the applicant pursuant to this section
92 may appeal therefrom in accordance with the provisions of section 4-
93 183 of the general statutes, except that venue for such appeal shall be
94 in the judicial district of Hartford. Appeals under this section shall be
95 privileged in respect to the order of trial assignment.

96 (h) A care provider shall maintain records evidencing compliance
97 with the provisions of this section with respect to all applicants and
98 caregivers hired on or after October 1, 2001.

99 (i) All criminal records obtained pursuant to this section by the
100 Department of Public Health and the Department of Public Safety shall
101 be confidential. No criminal history records obtained pursuant to this
102 section may be used for any purpose other than determining whether
103 an applicant has criminal records that disqualify the applicant from
104 employment as a caregiver or an administrator. Except upon the order
105 of the Superior Court or with the written consent of the applicant,
106 criminal records obtained pursuant to this section and the information
107 contained therein may not be released or otherwise disclosed to any
108 other person or agency. Criminal records obtained pursuant to this
109 section shall not be subject to disclosure under the Freedom of
110 Information Act, as defined in section 1-200 of the general statutes.

111 Any person who discloses confidential records or information in
112 violation of this section is guilty of a class D misdemeanor.

113 (j) A provider who fails to comply with the requirements of this
114 section shall be subject to a fine of not more than five hundred dollars
115 for each violation.

116 (k) The Commissioner of Public Health shall charge each provider a
117 fee for each national criminal history screening that shall be equal to
118 the fee charged by the Federal Bureau of Investigation for performing
119 such screening. The Department of Public Health shall reimburse the
120 Department of Public Safety for the actual cost for a national criminal
121 history screening.

122 (l) The Commissioner of Public Safety may adopt regulations, in
123 accordance with the provisions of chapter 54 of the general statutes, to
124 implement the provisions of this section relating to fingerprint
125 procedures, confidentiality of records within the Department of Public
126 Safety, timeframes for an applicant's nation-wide criminal history
127 screening and procedures for clarifying incomplete or confusing
128 criminal history information.

129 (m) The Commissioner of Public Health may adopt regulations, in
130 accordance with the provisions of chapter 54 of the general statutes, to
131 implement the provisions of this section, except for matters covered by
132 regulations pursuant to subsection (l) of this section. Such regulations
133 may include, but not be limited to, the establishment of a three-year
134 phased implementation based on type of provider, confidentiality of
135 records within the Department of Public Health, procedures for
136 appeals pursuant to subsection (f) of this section and employment
137 procedures pending the results of the nation-wide criminal history
138 screening relating to applicants and caregivers.

139 Sec. 2. Not later than October 1, 2001, the Commissioner of Public
140 Health shall notify each provider, as defined in section 1 of this act, of
141 the requirements of section 1 of this act.

142 Sec. 3. This act shall take effect from its passage, except that section
143 1 shall take effect October 1, 2001, and shall be applicable to applicants
144 hired on and after October 1, 2001.

Statement of Purpose:

To insure that persons who work as caregivers to the elderly are suited for such work.

[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]

Co-Sponsors: SEN. PRAGUE, 19th Dist.; SEN. GUGLIELMO, 35th Dist.
 REP. MORDASKY, 52nd Dist.; REP. MARTINEZ, 95th Dist.

S.B. 6

H.B. 5343, 6336